

## REMARKS

Reconsideration of this application, as amended, is requested.

Claims 3 and 25 remain in the application. Claim 26 has been canceled. Claims 25 has been amended to address the rejections under 35 USC 112 that were raised in the Office Action of July 13, 2004. It is hoped that this amendment will place the application in better condition for Appeal by eliminating formal issues and hence narrowing issues that would be considered on Appeal. The issues that will be considered in the Appeal are the applicability of Anderson et al. to the remaining claims and the relevancy of the term "butt joint" as used in Anderson et al.

Anderson et al. clearly shows only an overlapped connection between a stent and a graft. The Examiner is of the opinion that the phrase "butt joint" mentioned in Anderson et al. refers to something other than the illustrated overlapped connection of Anderson et al. To support this position, the July 13, 2004 Office Action turned to onelook.com and noted that onelook.com refers to several "general purpose" dictionaries, one "tech" dictionary and an "art" dictionary. The Examiner stated that the "general purpose" dictionaries define "butt joint" as "a joint made by fastening the parts together end-to-end without overlap" and "a joint formed by two abutting surfaces placed squarely together." The Examiner stated that the "tech" dictionary defines "butt joint" as a weld where two panels are fit against each other end-to-end. The Examiner stated that the "art" dictionary refers to a joining of two pieces of film or two colors of ink without overlapping.

The Examiner's comments about the onelook.com search omitted a few relevant bits of information. First, one of the several "general purpose" dictionaries at

the [onelook.com](http://onelook.com) site mentioned by the Examiner (The American Heritage Dictionary) had a graphic component with the definition. That graphic component is presented below and is incorporated into the Information Disclosure Statement filed with this amendment.

The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

## **butt joint**



NOUN: A joint formed by two abutting surfaces placed squarely together.

The Examiner will note that the graphic component clearly shows the two abutting surfaces placed squarely together to define a right angle. This illustration is consistent with the other definitions that have no illustration.

Three of the other “general purpose” dictionaries mentioned at [onelook.com](http://onelook.com) have links to sites with graphic components. The illustrations at those links are presented in the attached Information Disclosure Statement, and each shows a right angle connection. These illustrations at the sites linked to the [onelook.com](http://onelook.com) “general purpose” dictionaries all show butt joints that are completely consistent with the materials previously submitted by the applicant herein.

The “tech” dictionary mentioned in the Office Action is actually entitled Dictionary of Automotive Terms and is purported to have the meaning of “expressions for automobiles, motorcycles, engines and boats.” It is not clear how this “tech” (i.e. automotive) definition relates to the claimed “endovascular stent/graft assembly for repairing a section of a blood vessel that has an aneurysm.” Nevertheless, the “tech”

(automotive) definition of two panels fit against each other end-to-end is consistent with the American Heritage illustration.

The definition quoted in the Office Action as being from the “art” dictionary actually was the definition for the word “butt”. That same “art” dictionary cited by the Examiner identifies “butt joint” as “a right angle made by joining two pieces of butting material (especially of wood) broad edge to narrow edge, without mitering” (emphasis in original). These relevant portions of the “art” dictionary also are submitted with the Information Disclosure Statement. It must be emphasized that the preceding definitions are not definitions that the applicant scoured the literature to find. Rather, these are the sources cited by the Examiner in the latest Office Action.

The Examiner also referred to two patent references that use the term “butt joint” in connection with medical products. In this regard, FIG. 15 of U.S. Patent No. 5,928,281 shows an arrangement where tabs are folded into edge-to-edge relationship with one another, and are supported on a backing. FIG. 12 of U.S. Patent No. 6,565,599 illustrates a dovetail-type interconnection between a link and a ring. The text briefly refers to an unillustrated butt joint where the end of the link is adhered to the edge of the ring. In the terminology of vascular surgery, one of these patents describes a side-to-side connection and the other describes an end-to-side connection. Counsel also has noted a mention of a butt joint in U.S. Patent No. 6,749,628, and that reference is identified in the attached Information Disclosure Statement. U.S. Patent No. 6,749,628 relates to interconnection of two tubular members and uses the term “butt joint” at col. 26, line 65 to refer to an overlapped connection in FIG. 29 that looks much like Anderson et al.

To complete the round up of dictionary references, the Information Disclosure Statement submitted with this amendment includes pages from three medical dictionaries. Dorland's Illustrated Medical Dictionary defines "butt" as "to bring the surfaces of two distinct objects squarely or directly into contact with each other" (emphasis added). Taber's Cyclopedic Medical Dictionary defines "butt" as "to join two square-ended objects together" (emphasis added) Stedman's Medical Dictionary defines "butt" as "1. to bring any two square-ended surfaces in contact so as to form a joint. 2. in dentistry, to place a restoration directly against the tissues covering the alveolar ridge" (emphasis added) The definitions from these three medical dictionaries, with the exception of the dentistry definition in Stedman's, are fully consistent with the American Heritage illustration that shows a right angle "butt joint". The non-dentistry definitions do not reference connection of tubular objects. The dentistry reference in Stedman's is consistent with the overlapped connection depicted in Anderson et al. and also consistent with the dental butt joint in an earlier Information Disclosure Statement and reproduced below.

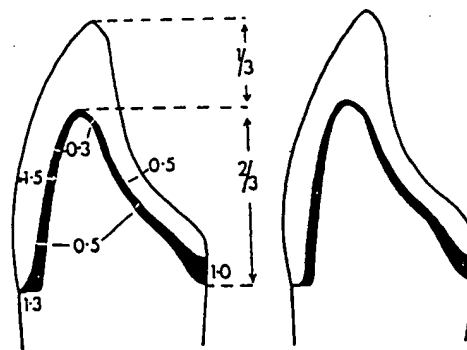


Figure 11. The butt joint: (a) Preparation and coping design for a metal-ceramic crown where aesthetics is of prime importance. (b) Coping design for a metal-ceramic crown where a porcelain butt fit is desired. All dimensions in millimetres.

The last Office Action did not comment on the relevancy of Vanderlande Industries Nederland BV v. ITC, 70 USPQ 2d 1696 (Fed. Cir. 2004). The Court there explained that when evidence

“demonstrates that artisans would attach a special meaning to a claim term, or, as here, would attach no meaning at all to a claim term (independent of the specification), generally usage dictionaries are rendered irrelevant with respect to that term; a general-usage dictionary cannot overcome credible art-specific evidence of the meaning or lack of meaning of a term”

The Vanderlande decision is intended to avoid the preceding “wordsmithing” and parsing, all of which merely demonstrates that “butt joint” has many different meanings to different people in different contexts. The issue is not whether a definition from the applicant’s wood working book is more applicable than the definition from the Examiner’s art dictionary. Rather, the real issue is: What does Anderson et al. teach to a person skilled in this art? Anderson et al. shows only a connection of two tubular members with an overlap and uses the term “butt joint” vaguely in the paragraph that describes the overlapped depiction of tubular members. The newly cited U.S. Patent No. 6,749,628 also uses the term “butt joint” vaguely with reference to a figure that clearly shows two overlapped tubular members. The host of other dictionary definitions now in the record, and extending from wood working books to art dictionaries, merely shows that there is no clear meaning of the term “butt joint” that would support the Examiner’s position that Anderson et al. is referring to a specific structure other than the structure illustrated in the Anderson et al. patent. It is precisely for this reason that the Court of Appeals in Vanderlande emphasizes that general purpose dictionaries cannot be used to provide a meaning to a term where “credible

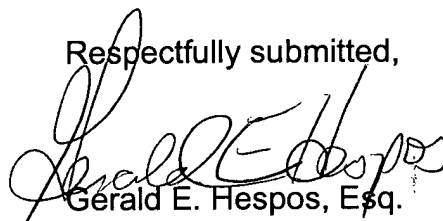
art-specific evidence” shows a lack of meaning for the term in the art. The Court’s logic applies equally well to the “art” dictionary and the Dictionary of Automotive Terms cited by the Examiner. It is submitted that Anderson et al. shows an overlapped connection and cannot be considered to teach a structure other than the overlapped connection. The Anderson et al. reference certainly does not anticipate a claim that specifically recites no overlap.

Finally, the July 13, 2004 Office Action did not address the assertions in the Rule 132 Declaration and in Section 3g of the last Amendment pertaining to the Anderson et al. use of the term “small”. In particular, the Examiner has boot strapped the word “small” in Anderson et al. into a theory that the Anderson et al. reference is trying to achieve a small cross-section for ease of introduction. The Examiner must understand that expandable stents have been available for many years. An expandable stent necessarily starts off with a cross-section that is “small” and ends up with a cross-section that is “large”. The “large” cross-section should correspond to the dimensions of the blood vessel. The Rule 132 Declaration explains that Anderson et al. clearly sacrifices “smallness” to achieve a constant length of the stent before and after expansion. Of course, any stent will have a smaller cross-section before expansion. However, the Rule 132 Declaration explains that Anderson et al. is more concerned with a fixed length so that the stent can be positioned precisely in the blood vessel. Hence the Anderson et al. reference clearly accepts a larger pre-expansion cross section than he could otherwise have obtained if Anderson et al. was less concerned with maintaining a constant length. In any event, the Anderson et al. reference to “small” pertains only to the stent. The point of the invention claimed herein is that for any size

stent, the cross section for deployment can be reduced significantly by providing an end-to-end connection with no overlap. The Anderson et al. cursory acknowledgement that the stent will be smaller prior to expansion is irrelevant, and as explained in the Rule 132 Declaration, the Anderson et al. design parameters clearly have not been selected in an effort to achieve a truly "small" cross section for ease of introduction.

The Examiner is requested to reconsider the rejection and allow the claims in their amended form or to at least enter these amendments so that the issues for Appeal can be narrowed.

Respectfully submitted,



Gerald E. Hespos, Esq.

Atty. Reg. No. 30,066

Customer No. 001218

CASELLA & HESPOS LLP

274 Madison Avenue - Suite 1703

New York, NY 10016

Tel. (212) 725-2450

Fax (212) 725-2452

Date: October 12, 2004